

2016-105

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re: TC Heartland, LLC,
Petitioner

On Petition for Writ of Mandamus to the U.S. District Court for the District of
Delaware in No. 1:14-cv-00028-LPS, Chief Judge Leonard P. Stark

**RESPONDENT’S OPPOSITION TO WASHINGTON LEGAL
FOUNDATION’S MOTION FOR LEAVE TO FILE AN AMICUS BRIEF**

Respondent Kraft Foods Group Brands (“Kraft”) opposes the motion for leave to file an amicus curiae brief by Washington Legal Foundation (“WLF”). (Dkt. 51-1.) WLF’s amicus brief is several months late, is twice the permissible length, and, if allowed, would leave Kraft without adequate time to prepare a response in advance of the March 11, 2016 oral argument.

TC Heartland LLC (“Heartland”) filed its mandamus petition on October 23, 2015. Amicus briefs in favor of the Petition were due on October 30, 2015—almost four months ago. *See* FED. R. APP. P. 29(e) (requiring amicus briefs to be submitted “no later than 7 days after the principal brief of the party being

supported is filed”).¹ WLF gives no adequate reason for the delay. Its motion for leave states only that it was “unaware” of this case until “several weeks ago.” (Dkt. 51-1, ¶ 6). However, the motion fails to explain why WLF then waited “several weeks” to seek leave to file the brief, when amici typically only have seven days to file briefs in a mandamus proceeding. *See* FED. R. APP. P. 29(e).

WLF’s brief is not only untimely but fails to comply with the page limits for amicus briefs. “Except by the court’s permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party’s principal brief.” FED. R. APP. P. 29(d). Pursuant to Rule 21(d), a mandamus petition “must not exceed 30 pages”; thus, an amicus brief filed in favor of a petition may not exceed 15 pages. At 30 pages, WLF’s brief is twice the permissible length.

Finally, allowing WLF’s belated submission would be prejudicial to Kraft. WLF tendered its brief just three weeks before oral argument (scheduled for March 11, 2016). The lengthy brief purports to address a personal jurisdiction argument to which Heartland itself devoted only three pages at the end of its Petition. (*See* Dkt. 2 at 10-13). If WLF’s brief were permitted to be filed, Kraft would be left

¹ Several amici were able to meet this deadline. One group tendered a brief on October 29. (Dkt. 9). Another group filed a motion for a short extension of time on October 30 (dkt. 11) and tendered a brief on November 6 (dkt. 22), several days before Kraft’s response was due.

with virtually no time in which to prepare and submit a response to the issues raised in the brief in advance of oral argument.

For these reasons, Kraft respectfully requests that the Court deny WLF's motion for leave to file an amicus brief.

Dated: March 3, 2016

Respectfully submitted,

/s/ John D. Luken

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Kraft Foods Group Brands LLC

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IN RE: TC HEARTLAND, LLC
No. 2016-105

CERTIFICATE OF INTEREST

Counsel for Respondent Kraft Foods Group Brands LLC certifies the following:

1. The full name of every party represented by the undersigned is Kraft Foods Group Brands LLC.
2. No other real parties in interest are represented by the undersigned.
3. Kraft Heinz Foods Co. is the parent company of Kraft Foods Group Brands LLC. No publicly traded company owns 10 percent or more of Kraft Foods Group Brands LLC's stock. Kraft Heinz Foods Co. is wholly owned by The Kraft Heinz Company, a publicly traded company.
4. The names of all law firms and the partners or associates that appeared for Kraft Foods Group Brands LLC in the trial court or are expected to appear in this court are:

DINSMORE & SHOHL LLP

John D. Luken
Joshua A. Lorentz
Patrick D. Lane
Eric K. Combs
Robert M. Zimmerman
Christen M. Steimle
Jaci L. Overmann
Nicole M. Sigurdson

RICHARDS, LAYTON & FINGER, P.A.

Frederick L. Cottrell, III
Selena E. Molina
Anthony G. Flynn

Date: March 3, 2016

Respectfully submitted,

/s/ John D. Luken

John D. Luken

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of this document was filed electronically with the Clerk of the Court using CM/ECF and was served via the CM/ECF system and via electronic mail on counsel of record on March 3, 2016.

/s/ John D. Luken

John D. Luken

Attorney for Respondent

Kraft Foods Group Brands LLC